

09-3661
SALESPERSON LICENSE
SIGNED 07-29-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT
DIVISION OF THE UTAH STATE TAX
COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-3661

Tax Type: Salesperson License

Tax Year: 2009

Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., Esq.
PETITIONER

For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Assistant Director of Motor Vehicle
Enforcement
RESPONDENT REP. 3, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on March 18, 2010. Petitioner ("Licensee") is appealing the Respondent's ("Division's") suspension of his salesperson license to sell motor vehicles.

APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code Ann. §41-3-209(2) as follows:

- (a) If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the license.
- (b) Reasonable cause for denial, suspension, or revocation of a license includes, in relation to the Licensee or license holder or any of its partners, officers, or directors:
 - (vii) a violation of any state or federal law involving motor vehicles...

- (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles...
- (x) a violation of any state or federal law involving fraud...

A license may not be issued to someone who has been convicted of a motor vehicle violation unless full restitution has been made, as set forth in Utah Code Ann. §41-3-201(7), below:

A person who has been convicted of any law related to motor vehicle commerce or motor vehicle fraud may not be issued a license unless full restitution regarding those convictions has been made.

DISCUSSION

The Licensee submitted a Motor Vehicle Salesperson Application to the Division on or about August 4, 2009 to renew his salesperson license. The Division issued a letter dated November 30, 2009 that suspended the license based on charges filed in the Fourth District Court. The following charges have been filed against the Licensee, and as of the hearing date are still pending:

<u>Date</u>	<u>Charge</u>
3/9/09	8 counts of Equity Skimming of a Vehicle (Third Degree Felony)
3/9/09	1 count of Communications Fraud (Third Degree Felony)
3/9/09	10 counts of Failure to Deliver Title by a Dealer (Class A Misdemeanor)
3/9/09	3 counts of Theft by Deception (Second Degree Felony)

The Licensee was employed by, and President of COMPANY D, a used car dealership. All of the pending charges are related to the Licensee's involvement with COMPANY D. The Licensee has paid in excess of \$\$\$\$\$ in attempts to obtain title to the vehicles, and repay obligations of COMPANY D. The Licensee borrowed against his house, taking out both a first and second mortgage; in addition, he borrowed a significant sum from his sister. He provided a list of fifteen vehicles on which he has paid the outstanding obligation and obtained title; five vehicles that he has either obtained the title to or made arrangements; and another two vehicles on which he has paid the outstanding obligation. The Licensee testified that once he has the funds available he will pay for the transfer of title; he anticipated that would be on March 20th.

The Licensee provided letters from COMPANY A, COMPANY B, and COMPANY C. All of the letters indicate that the Licensee is working in good faith to try and resolve the title issues and obligations from COMPANY D.

The Licensee's representative argued that Utah Code Ann. §41-3-209, was very fact intensive, and not one of the situations identified in the statute was controlling. He argued that because the charges are still pending, it isn't a "violation" because the Licensee could enter into a

plea in abeyance, or the charges could be dismissed altogether. He stated that it makes better sense to handle the criminal charges before any administrative action is taken. The Licensee's representative argued that the public is better protected if the suspension of the license is stayed, because the Licensee can continue working, and earning money to resolve the outstanding obligations of COMPANY D and the delivery of title.

The Division provided copies of the Application, the Division's letter suspending the license, a Dealer Flooring and Security Agreement with COMPANY B, Personal Guaranty, and a returned check payable to COMPANY B in the amount of \$\$\$\$\$. The Division's representative stated that in 1997, the Legislature amended Utah Code Ann. §41-3-209 to deny, revoke, or suspend a license for a "violation". He argued that while that is typically interpreted to be a conviction, the language does allow for something more. The Division's representative stated that the statute requires a license be revoked if there is reasonable cause; and that charges filed for a violation of law involving motor vehicles and violations of law involving fraud are reasonable cause. He further pointed out that a license may not be granted under Utah Code Ann. §41-3-207 to someone convicted of a crime involving motor vehicles, unless full restitution has been made. It is the Division's position that because there are numerous felony and misdemeanor charges pending against the Licensee, it is prudent to suspend the license until the charges have been resolved. He further noted that as long as the Licensee is in the appeals process, he can continue to sell motor vehicles.

Utah Code Ann. §41-3-209 mandates that a license "shall" be denied, revoked, or suspended for reasonable cause. The statute then specifically identifies charges for a violation of any state or federal law involving motor vehicles as "reasonable cause." The Division properly suspended the license because the Licensee has twenty-two felony and misdemeanor charges pending against him involving motor vehicles. Though the Licensee appears to be making progress toward rectifying the title problems and repaying creditors, due to the number of charges, and that most of them are for felonies, there is not good cause to stay the Division's suspension of the Licensee's motor vehicle salesperson license.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission upholds the Division's suspension of the motor vehicle salesperson license. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless either party to this case files a written request within thirty (30) days of the date of this decision to proceed to a formal decision. Such request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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